

Amendment Number 1
to
Contract Number DIR-TSO-2539
between
State of Texas, acting by and through the Department of Information Resources
and
ORACLE AMERICA, INC.

This Amendment Number 1 to Contract Number DIR-SDD-2539 (“Contract”) is between the Department of Information Resources (“DIR”) and Oracle America, Inc. (“Vendor”).

Both parties are in agreement to add Cloud Services, Technical Cloud Services and Managed Cloud Services (each as described more fully below). In addition, JD Edwards products and services will now be available through this Contract. The addition of these products and services falls within the scope of the original Request for Offer (RFO) DIR-TSO-TMP-210. DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 1. Introduction, C. Order of Precedence** is hereby amended as follows:

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Software License Agreement; Appendix E-1, Sample Ordering Document Hardware and Software Products and First-Year Technical Support; Appendix E-2, Sample Ordering Document Technical Services; Appendix E-3, Sample Ordering Document Advanced Customer Support Services; Appendix E-4, Sample Ordering Document Oracle Linux and Oracle VM Support Services; Appendix E-5, Sample Ordering Document Renewal of Technical Support; Appendix E-6, Sample Ordering Document Oracle University Learning Credits; Appendix E-7, Sample Ordering Document Managed Cloud Services; Appendix E-8, Sample Ordering Document Cloud Services and Technical Cloud Services; Appendix E-9, Sample Ordering Document Technical Cloud Services; Appendix F, Delivery, Installation, Commencement Date and Acceptance; Appendix G, Public Sector General Terms; Appendix H, Public Sector Schedule P – Program; Appendix I, Public Sector Schedule S – Services; Appendix J, Public Sector Schedule LVM – Linux and Oracle VM Service Offerings; Appendix K, Public Sector Schedule H – Hardware Agreement; Appendix L, Schedule M - Oracle Managed Cloud Services; Appendix M, Schedule C - Cloud Services - Public Sector; Appendix N, Data Processing Agreement for Oracle Cloud Services; Appendix O, Oracle Services Privacy Policy; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-210 including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-210, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E-1, then Appendix E-2, then Appendix E-3, then Appendix E-4, then Appendix E-5, then Appendix E-6, then Appendix E-7, then Appendix E-8, then Appendix E-9, then

Appendix F, then Appendix G, then Appendix H, then Appendix I, then Appendix J, then Appendix K, then Appendix L, then Appendix M, then Appendix N, then Appendix O, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions. Notwithstanding the forgoing, as between Appendix G (Public Sector General Terms) and the relevant Schedule for the products and services being purchased under the Contract (i.e., Appendix H, Public Sector Schedule P – Program; Appendix I, Public Sector Schedule S – Services; Appendix J, Public Sector Schedule LVM – Linux and Oracle VM Service Offerings; Appendix K, Public Sector Schedule H – Hardware; Appendix L, Schedule M - Oracle Managed Cloud Services; Appendix M, Schedule C - Cloud Services - Public Sector), such Schedule shall take precedence over Appendix G (Public Sector General Terms) for such ordered product or service. Furthermore, for Cloud Services, Technical Cloud Services and Managed Cloud Services, the Data Processing Agreement and the applicable Service Specifications (for Cloud Services) and Schedule incorporated into the Statement of Work (for Managed Cloud Services) shall take precedence; however, in any event this Contract shall prevail over all.

2. **Contract, Section 3. Product and Service Offerings, B. Services** is hereby amended as follows:

Services available under the Contract are limited to Technical Services; advanced customer support (ACS) services; installation services; maintenance and technical support services; technical and managed services (including Oracle Linux/Oracle VM Service Offerings, as defined in Appendix J and ACS services); training/education services; packaged services for the products as specified in the RFO and Appendix C, Pricing Index; Managed Cloud Services (as further described in Appendix L); and Cloud Services and Technical Cloud Services (each as further described in Appendix M). Vendor may incorporate changes to its service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B.

To advance the uniform statewide accounting project and enterprise resource planning referenced in Chapter 2101, Texas Government Code, the Texas Comptroller of Public Accounts (“CPA”) may negotiate for and purchase Cloud Services (as defined in Appendix M) under this Contract for use by the CPA or state agencies (defined by Section 403.013, Texas Government Code), as evidenced and detailed in the applicable ordering document.

3. **Contract Section 7. Software License and Service Agreement, B. Service Agreement** reference to “Appendix E 1-6” is replaced by “Appendices E-1 – E-9”.
4. **Contract, Section 7. Software License and Service Agreement, C. Conflicting or Additional Terms** is hereby amended and restated as follows:

As provided for elsewhere in this Contract and the Appendices to this Contract, certain of the incorporated or linked or supplemental documents may be subject to change. However, no financial obligation of the Contractor shall be affected by any change in such documents, nor will additional material obligations be placed on the Customer as a result of these changes.

5. **Appendix A, Section 3, Definitions, E. Day** the parties hereby clarify that “day” shall mean calendar day (unless otherwise specified) when used in Appendices D - O or in an Ordering Document.
6. **Appendix A, Section 3, Definitions, F. Order Form**, is hereby amended such that reference to “Appendices E 1-6” is replaced by “Appendices E-1 – E-9”.
7. **Appendix A, Section 5, Intellectual Property Matters**, the parties hereby clarify that this section as revised in Section 8 (Authorized Exceptions to Contract or Any appendices) of the Contract applies to Technical Services purchased pursuant to an Order Form for Technical Services, a sample of which is proved in Appendix E-2; and that any deliverables provided to the Customer pursuant to the Contract in accordance with Oracle’s provision of Managed Cloud Services, Cloud Services and/or Technical Cloud Services shall be governed by Section 2 (Rights Granted) of Schedule M (Appendix L of this Contract) for Managed Cloud Services or Section 2 (Rights Granted) of Schedule C (Appendix M of this Contract) for Cloud Services and Technical Cloud Services, as applicable.
8. **Appendix A, Section 5.I (which was previously renumbered to be Section 5.C), Third-Party Underlying and Derivative Works**, is hereby amended as follows:
 - a. For Services (other than Managed Cloud Services, Cloud Services and Technical Cloud Services) the following terms shall apply to deliverables:
 - i. Upon payment for the services under an Order Form, Customer shall have the non-exclusive, non-assignable except as otherwise provided for in the Contract, royalty free perpetual, limited right to use for the Customer’s internal business operations, anything developed by Vendor and delivered to the Customer under such Ordering Form. The Customer may allow its agents and contractors (including, without limitation, outsourcers) to use the deliverables for this purpose and the Customer is responsible for their compliance with the Order Form in such use. Unless otherwise provided for in the Order Form pursuant to Appendix A, Section 5.B of the Contract, Vendor retains all ownership and intellectual property rights to anything developed or delivered under an Order Form. For anything developed or delivered under an Order Form that is specifically designed to allow a Customer’s customers and suppliers to interact with the Customer in the furtherance of the Customer’s internal business operations, such use is allowed under the Contract.

- ii. With respect to Technical Services, Vendor agrees to notify Customer in the Order Form, or on delivery of the Work Product or Technical Services deliverables if the deliverables include any Third Party IP. On request, Vendor shall provide Customer with documentation confirming a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product as provided for in the Contract.

- b. For Managed Cloud Services, the following terms shall apply to deliverables:

During the services term for the Managed Cloud Services ordered and subject to the Customer's payment obligations, and except as otherwise set forth in this Contract, Appendix G – Public Sector General Terms, Appendix L – Schedule M – Managed Cloud Services or the Order Form, the Customer will have a limited, non-exclusive, non-assignable, right to access and use anything developed by Vendor and delivered to the Customer as part of the Oracle Managed Cloud Services specified in the Customer's Order Form solely for the Customer's internal business operations, and subject to the terms of this Contract, Appendix G – Public Sector General Terms, Appendix L - Schedule M – Managed Cloud Services and the applicable Order Form. Vendor retains all ownership and intellectual property rights to anything developed by Vendor and delivered to the Customer as part of Managed Cloud Services under this Contract.

- c. For Cloud Services and Technical Cloud Services, the following terms (as set forth in Appendix M – Schedule C - Cloud Services) shall apply to deliverables:

For the duration of the Services Period (as defined in Appendix M – Schedule C - Cloud Services) and subject to the Customer's payment obligations, and except as otherwise set forth in this Contract, Appendix G - Public Sector General Terms, Appendix M – Schedule C – Cloud Services or the Order Form, the Customer shall have the non-exclusive, non-assignable, royalty free, worldwide, limited right to access and use anything developed by Vendor and delivered to the Customer as part of the Cloud Services or Technical Cloud Services, solely for the Customer's internal business operations and subject to the terms of the Contract, Appendix G – Public Sector General Terms, Appendix M – Schedule C - Cloud Services and the Order Form, including the Service Specifications (as defined in Appendix M – Schedule C - Cloud Services). The Customer may allow its Users (as defined in Appendix M – Schedule C - Cloud Services) to use any such deliverables for this purpose and the Customer is responsible for the Customer's Users' compliance with Contract, Appendix G – Public Sector General Terms, Appendix M – Schedule C - Cloud Services and the Order Form.

9. Appendix A, Section 7, Contract Fulfillment and Promotion, C. Product Warranty and Return Policies, 1. Product and Services Warranties, d. Services, is hereby amended as follows:

Services. Vendor warrants that services (except Managed Cloud Services, Cloud Services and Technical Cloud Services) will be provided in a professional manner consistent with

industry standards. Customer must notify Vendor of any services warranty deficiencies within 90 calendar days from performance of the deficient services. The warranties, disclaimers and exclusive remedies for breach of warranty for Managed Cloud Services are provided for in Schedule M (attached as Appendix L to the Contract) and for Cloud Services and Technical Cloud Services are provided for in Schedule C (attached as Appendix M to the Contract).

10. Appendix A, Section 8, Pricing, Purchase Orders, Invoices, and Payment, I. Invoices, 2, is hereby amended as follows:

Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer. Managed Cloud Services and Cloud Services are invoiced quarterly in arrears, and Technical Cloud Services are invoiced monthly in arrears.

11. Appendix A, Section 9. Contract Administration, B. Reporting and Administrative Fees, 3) Historically Underutilized Businesses Subcontract Reports, is hereby amended by adding the following new clause c) at the end thereof:

c) Upon quarterly written request by DIR, Vendor shall provide to DIR a list of the Oracle Subprocessors (as defined in the Data Processing Agreement) and Subcontractors used for Cloud Services being provided under this Contract. Thereafter, upon written request by DIR, Vendor will make a good faith effort to revise its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses.

12. Appendix A, Section 10, Vendor Responsibilities, A. Indemnification, 3. Infringements the parties hereby clarify that with respect to Cloud Services, Vendor will not indemnify Customer to the extent that an infringement claim is based on Third Party Content (as defined in Appendix M (Schedule C – Cloud Services – Public Sector)) or any material from a third party portal or other external source that is accessible to Customer within or from the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, etc.). Vendor will not indemnify Customer for infringement caused by such Customer's actions against any third party if the Cloud Services as delivered to such Customer and used in accordance with the terms of this Contract would not otherwise infringe any third party intellectual property rights. With respect to Cloud Services, the infringement indemnification does not include Separately Licensed Third Party Technology (as defined in Appendix M (Schedule G – General Terms – Public Sector)). Solely with respect to Separately Licensed Third Party Technology that is part of or is required to use the Cloud Services and that is used (a) in unmodified form, (b) as part of or as required to use the Cloud Services, and (c) in accordance with the usage grant for the relevant Cloud Services and all other terms and conditions of this Contract, Vendor will indemnify Customer for infringement claims for Separately Licensed Third Party Technology to the same extent as Vendor is required to provide infringement indemnification under the terms of this Contract.

Lastly, Appendix A, Section 10.A.3.c.ii is amended by adding the following at the end of that section, “as provide for in the user documentation or the Service Specifications (as defined in Appendix M (Schedule C – Cloud Services – Public Sector), as applicable”.

13. **Appendix A, Section 10.H, Confidentiality, 2)** is hereby deleted in its entirety and replaced with the following:

2) By virtue of the Contract and orders submitted under the Contract, DIR, the Customer and Vendor may have access to information that is confidential to one another (“Confidential Information”). Each of the parties agrees to disclose only Confidential Information that is required for the performance of obligations under the Contract or any Order Form (and corresponding Purchase Order). Confidential Information shall be limited to all information clearly identified as confidential at the time of disclosure. A party’s Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; (d) is independently developed by the other party or (e) is required to be disclosed pursuant to the Texas Public Information Act. Except as set forth in the immediately following sentence, the parties agree to hold each other’s Confidential Information in confidence for a period of three years from the date of disclosure. Regarding any Cloud Services purchased by a Customer, with respect to such Customer Your Content (as defined in Appendix M) and Your Applications (as defined in Appendix M) residing in the applicable Services Environment (as defined in Appendix M) will be considered Confidential Information, and Vendor will (i) hold such Confidential Information in confidence for as long as it resides in the Services Environment and (ii) protect the confidentiality of such Confidential Information in accordance with the Vendor security practices defined in the Service Specifications (as defined in Appendix M) applicable to such Customer’s order. Also, each of the parties agrees to disclose Confidential Information only to those employees or agents who are required to protect it against unauthorized disclosure. Nothing shall prevent any party from disclosing the terms or pricing under the Contract or orders submitted under the Contract in any legal proceeding arising from or in connection with the Contract or disclosing the Confidential Information to a federal or state governmental entity as required by law.

14. **Appendix A, Section 10, Limitation of Liability** is hereby amended as by adding the following to the end of Section 10.K:

Notwithstanding clause ii) in the immediately preceding sentence, for any claim or cause of action arising out of the misappropriation of a Customer’s nonpublic personal information residing in such Customer’s Services Environment (as defined in Appendix M) that results solely from Vendor’s breach of its security practices incorporated into such Customer’s applicable order of Cloud Services (as defined in Appendix M), Vendor’s aggregate liability for damages of any kind under the Contract shall be limited to four (4)

times the total amounts actually paid to Vendor for the Cloud Services under the order that is subject of the claim in the 12-month period immediately preceding the event giving rise to such claim; Vendor's aggregate liability under the Contract shall not exceed \$3,000,000.

15. **Appendix A, Section 12, Notices**, the parties hereby clarify that with respect to Cloud Services, certain notices may be provided in accordance with Section 17 of Appendix M (Schedule C – Cloud Services – Public Sector).
16. **Appendix D, Software License Agreement** is hereby replaced in its entirety with **Appendix D, Software License Agreement** as attached hereto this Amendment Number 1.
17. **Appendix E-1, Sample Ordering Document Hardware and Software Products and First-Year Technical Support** is hereby replaced in its entirety with **Appendix E-1, Sample Ordering Document Hardware and Software Products and First-Year Technical Support** as attached hereto this Amendment Number 1.
18. **Appendix E-7, Sample Ordering Document Managed Cloud Services** is hereby added.
19. **Appendix E-8, Sample Ordering Document Cloud Services and Technical Cloud Services** is hereby added.
20. **Appendix E-9, Sample Ordering Document Technical Cloud Services** is hereby added.
21. **Appendix G, Public Sector General Terms, first paragraph, third line** correct DIR-TSO-2359 to DIR-TSO-2539.
22. **Appendix H, Public Sector Schedule P – Program, first paragraph, last line** correct DIR-TSO-2359 to DIR-TSO-2539.
23. **Appendix I, Public Sector Schedule S – Services** is hereby replaced in its entirety with **Appendix I, Public Sector Schedule S – Services** as attached hereto this Amendment Number 1.
24. **Appendix J, Public Sector Schedule LVM – Linux and Oracle VM Service Offerings, first paragraph, last line; footer page 1 through 3; and Section 5, Audit, fourth line** correct DIR-TSO-2359 to DIR-TSO-2539.
25. **Appendix K, Public Sector Schedule H – Hardware, first paragraph, third line** correct DIR-TSO-2359 to DIR-TSO-2539.
26. **Appendix L, Schedule M-Oracle Managed Cloud Services** is hereby added.
27. **Appendix M, Schedule C-Cloud Services-Public Sector** is hereby added.

28. **Appendix N, Data Processing Agreement for Oracle Cloud Services** is hereby added.

29. **Appendix O, Oracle Services Privacy Policy** is hereby added.

30. **Appendix C, Pricing Index** is hereby replaced in its entirety with **Appendix C, Pricing Index** as attached hereto this Amendment Number 1.

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment Number 1 and then the Contract.

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IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature.

ORACLE AMERICA, INC.

Authorized By: Signature on File

Name: Elizabeth Hwang

Title: Senior Contracts Specialist

Date: 2/5/15

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Dale Richardson

Title: Chief Operations Officer

Date: 2/6/15

General Counsel: DB 2/6/15